

## **Remarks**

The Applicant requests that the above Amendment be entered and the application examined as amended, and in view of the remarks below.

By this Amendment, the Applicant amended claim 65, 84, 85, and 92; canceled claims 86-91; and introduced new claims 93 and 94.

Claims 65, 66, 68-70, 73, 74, 77, 80, 84, 85, and 92-94 are now pending in this application.

### **1. Response to §112 Rejection**

On page 2 of the Action, the Patent Office Rejected claims 65-92 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Applicant believes that the above amendment overcomes this rejection.

### **2. Response to Obviousness Rejections in view of Ludlow and Kvalvik**

On page 3 of the Action, the Patent Office rejected claims 65, 68, 70, 74, 77, 80, 87 and 92 under 35 U.S.C. 103(a) as obvious in view of the combined teachings of U.S. Patent 5,754,989 of Ludlow [herein "Ludlow"] and U.S. Patent 5,715,546 of Kvalvik [herein "Kvalvik"]. The Applicant submits that these rejections are inappropriate and requests that they be reconsidered and withdrawn.

In response to the recent Supreme Court decision in KSR v. Teleflex, Inc., the Applicant understands that some guidance when considering an obviousness

rejection under 35 U.S.C. 103 was provided in a memorandum to Technology Center Directors from Margaret A. Focarino, Deputy Commissioner for Patent Operations, captioned "Supreme Court decision on KSR Int'l. Co., v. Teleflex, Inc.," dated May 3, 2007. In this memorandum, Ms. Focarino first underscores the continued significance of the Graham inquiries, that is,

- (a) determining the scope and contents of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- © resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating evidence of secondary consideration.

Moreover, among other things, Ms. Focarino advises:

(4) The court noted that the analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit, and that it was important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed." The Court specifically stated:

Often, it will be necessary...to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit**.

KSR, slip op. at 14 (emphasis provided by Ms. Focarino)  
**Therefore, in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.** (Emphasis provided by Ms. Focarino.)

The Applicant submits that Ms. Focarino's advisories are particularly applicable to the present rejections under §103(a). In particular, the Applicant submits that there is no "apparent reason" to combine the teachings of the cited references. Furthermore, the Patent Office has not provided any "explicit"

reasons for combining the teachings of the references, as promulgated by the Supreme Court's instructions.

The Applicant submits that the above amendment to claim 65 clearly distinguishes the invention from the cited art. Specifically, the Applicant submits that neither Ludlow nor Kvalvik, nor any of the other art of record, provide the teaching of a "removable" head rest or an electronic speaker associated with the head rest having "a speaker wire extending within the housing." As described in column 5, lines 13-25 (5:13-015) Kvalvik teaches a "head rest 28" that is "[p]referably...formed integrally with...the tub cushion 10, rather than as a separate component..." Moreover, Ludlow is silent on whether "cushions 175" are in anyway removable. Based upon this distinction alone, the Applicant submits that this rejection is inappropriate.

Kvalvik and Ludlow are also silent on the use and placement of speaker wires. Since Ludlow does not include any speaker at all, Ludlow does not discuss speaker wires or their routing. Kvalvik teaches away from the use of speaker wire. Specifically, at 5:48-51, Kvalvik states, "Preferably, the audio equipment A is battery powered, to reduce electrical shock hazard..." That is, neither Kvalvik nor Ludlow teach or suggest "having a speaker wire extending within the housing" as presented claimed. Again, the Applicant submits that this rejection of claim 35 is therefore inappropriate.

Should the Patent Office attempt to cite Diamond as a basis for the routing of speaker wire, the Applicant submits that Diamond fails to teach an electronic speaker "positioned to transmit sound through the at least one sound emitting perforation" of a head rest. As clearly illustrated in the Figures of Diamond, the speakers 40 of Diamond are not associated with the "pillow 60" of Diamond.

### **3. Teachings of the Cited Art with Respect to “uniform elevation”**

As recited in claim 65, the claimed sound system includes a head rest mounted “so as not to substantially alter the substantially uniform elevation” of the housing of the spa. As discussed in the present specification, undesirable modifications to the housing by the headrest can not only provide an unpleasing visual obstruction, but can interfere with or negatively impact the packing and shipping requirements for spa housings - housings which are typically packed and shipped in a nested fashion- and can interfere with covers typically attached to the spa between use. Though the spa of Ludlow may exhibit a desirable, relatively uniform housing rim elevation, even if one could introduce the electronic component of Kvalvik to the head rest of Ludlow (for example, by some undisclosed or unsuggested modification to the housing of Ludlow), the relatively uniform elevation of the Ludlow spa would have to be sacrificed. That is, typical of other prior art spas, the spa of Ludlow cannot accommodate a headrest without interfering with the shape of the spa housing. Thus, the combination of Ludlow and Kvalvik does not provide the advantages of the claimed invention of having a uniform elevation to facilitate packing, shipping, and covering. For this reason alone, the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

Furthermore, there is no motivation or suggestion in Ludlow or Kvalvik to provide an electronic speaker “located below the upper rim of the housing” as claimed. Referring again to the electronic component A of Kvalvik, component A is not located below the upper rim of the housing as claimed, but mounted on top of the housing. Again, contrary to Kvalvik, the present invention has the advantage of not requiring the mounting of the electronic speaker to extend above the housing rim whereby it would negatively impact the aesthetic qualities, packing, shipping, and covering requirements of the spa housing. For this

reason also, the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

#### **4. Kvalvik Discloses a “tub” not a “spa”**

The Applicant submits that the disadvantage of Kvalvik discussed above – that is, that Kvalvik interferes with the desired uniform elevation – is understandable since Kvalvik discloses a “tub cushion,” not a cushion that can be used for a spa. Not only does Kvalvik not disclose a spa, as claimed, but also the tub of Kvalvik is typically drained between uses and therefore is typically not covered between uses. Typically, spas are not drained between uses, but the water is left in place whereby a cover that can contact and seal a uniform housing elevation is highly desirable. Drained tubs typically do not require covers. Thus, the head rest of Kvalvik, contrary to the present invention, would disrupt the desired uniform elevation and thus interfere with the use of a cover on the spa.

#### **5. Incompatibility of Kvalvik with Ludlow**

Further still, the invention recited in claim 65 is also not obvious in view of Ludlow and Kvalvik due to the incompatibility of Kvalvik with Ludlow, and the undesirable effect upon Ludlow of introducing the teachings of Kvalvik. This requires a close examination of Ludlow. As described by its title and abstract, Ludlow discloses a “plumbing” or “water distribution system” for a spa. As shown most clearly in Figures 4 and 5 of Ludlow, the system disclosed by Ludlow includes a plurality of “manifolds” 139 mounted behind each seat of the spa. As shown in Figure 3, these manifolds 139 are mounted behind every seat or “pod” 137 that appears in the Ludlow spa. As shown in Figures 4 and 5 and described at 5:10-55, these manifolds 139 supply water to the water jets 115 in each pod 137. As shown most clearly in Figure 5 of Ludlow, the manifolds 139 are

mounted directly beneath headrests 175. The Applicant submits that, not only is there no suggestion or teaching in Ludlow to provide a speaker in the headrest 175, but the placement of such a speaker would interfere with the manifolds 139 that characterize the invention disclosed by Ludlow. There is simply no room for a speaker beneath the headrests of Ludlow and, should a speaker be introduced, some form of undisclosed and unsuggested modification to the housing or headrest of Ludlow must be provided. Failing to provide such motivation, teaching, or even physical space for such a modification, the Applicant respectfully submits that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik. The Applicant requests that this rejection be reconsidered and withdrawn.

In addition, the specification of Ludlow provides further evidence that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik. In column 4, lines 22-43, Ludlow explains how the placement of supply lines 129 in channels 131 (See figure 3) which supply manifolds 139 are preferably positioned above the "water line" 195 whereby any water in channel 131 "flows into the containment 105" (4:32). That is, Ludlow teaches that the elevation of supply lines 129 in channels 131 and thus the elevation of manifolds 139 behind headrests 175 is preferred to ensure the desired draining. This characteristic of the Ludlow system is summarized in lines 64-66 of column 4, where Ludlow summarizes one advantage of his invention as:

2) having the supply lines in covered channels, hollows, or chambers that are disposed such that water will drain or flow into the containment. [Emphasis added.]

That is, Ludlow states that the placement of manifolds higher in the tub housing, and inherently behind the headrest is one advantage of the Ludlow invention. The Applicant submits that locating the electronic equipment of Kvalvik at the same location as suggested by the Patent Office would interfere with this desired feature of Ludlow. Again, the Applicant submits that this provides further

evidence that the invention recited in claim 65 is not obvious in view of Ludlow and Kvalvik.

With respect to the rejections of dependent claims 66, 68-70, 73, 74, 77, 80, 84, 85, and 92-94, the Applicant submits that these claims are not obvious in view of Ludlow and Kvalvik for the same reasons that claim 65, from which they depend, is not obvious. The Applicant respectfully requests that these rejections also be reconsidered and withdrawn.

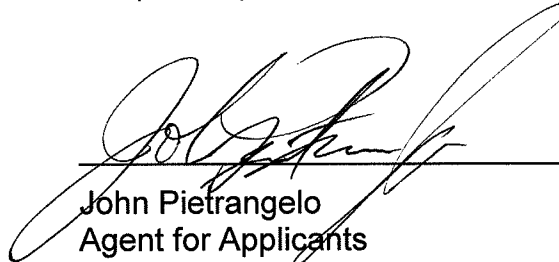
**6. No “Apparent Reason” to Combine the Teachings**

Finally, the Applicant submits that, contrary to the Supreme Court’s instructions summarized by Ms. Focarino, there are no apparent reasons to combine the teachings of Kvalvik and Ludlow, or in combining the teachings of Kvalvik, Ludlow, and Diamond to support these rejections under 35 U.S.C. 103(a). Specifically, the Applicant submits that there are no apparent reasons for combining the teachings of a tub cushion of Kvalvik with the plumbing system of the spa of Ludlow, or with the stereo system of Diamond whereby the presently claimed invention ensues. For this reason alone, the Applicant submits that these rejections are inappropriate and should be reconsidered and withdrawn.

### **Conclusion**

The Applicant believes that the above Amendment, in view of the above Remarks, places the application in condition for allowance. A favorable action on the merits of the application is requested. If a telephone conference would be of assistance in advancing prosecution of this application, the Applicant's undersigned Agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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